

Montana Water Court
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FILED
08/27/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41E-0248-R-2024
White, Eugene
4.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
BOULDER RIVER—TRIBUTARY OF THE JEFFERSON RIVER (BASIN 41E)
PRELIMINARY DECREE

CLAIMANT: L R Huckaba Ranch Inc.

CASE 41E-0248-R-2024
41E 4095-00

NOTICE OF FILING OF MASTER’S REPORT

This Master’s Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master’s Report within **10 days** of the stamped date if you disagree or find errors with the Master’s findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master’s Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master’s Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master’s Report.

MASTER’S REPORT

All water right claims that appeared in the Preliminary Decree for Boulder River (Basin 41E) were subject to “issue remarks” resulting from pre-decree examination by the DNRC, objections, and counterobjections. Claim 41E 4095-00 received an issue remark during the DNRC’s review of the claims.

The claim was consolidated into Case 41E-0248-R-2024 and an Order Requiring the Claimant to consult with the DNRC to resolve the issue remark was issued by the Water Court.

FINDINGS OF FACT

1. Claim 41E 4095-00 appeared in the Preliminary Decree with the following issue remark:

THE MEANS OF DIVERSION APPEARS TO BE INCORRECT. THE MEANS OF DIVERSION APPEARS TO BE A LIVESTOCK DIRECT FROM SOURCE.

2. On May 17, 2024, DNRC Water Resources Specialist Jason Larsen filed a *Memorandum* in this matter. The *Memo* states that the DNRC was never contacted by claimant L R Huckaba Ranch, Inc. The *Memo* goes on to note that there are two means of diversion, “gravity flow” and “direct” listed on the Statement of Claim and that there appears to be a secondary means of diversion which supplies water to stock tanks. Therefore, the DNRC made the following recommendations regarding the disposition of the issue remark:

RECOMMENDATION(S):

Claim 41E 4095-00

The DNRC recommends leaving the means of diversion as “multiple”.

The DNRC recommends that the D55 issue remark be removed.

3. On June 6, 2024, the Court set a filing deadline for claimant L R Huckaba Ranch, Inc. to file a statement if they disagreed with the above-listed recommendations from the DNRC regarding the issue remark appearing on claim 41E 4095-00. Nothing was filed by the deadline. The Order Setting Filing Deadline included the following language:

ORDERED that the deadline is **July 5, 2024** for L R Huckaba Ranch Inc. to file a written response to the DNRC recommendations *if it disagrees with these recommendations*. If no written response is filed by July 5, 2024, the Court will conclude that L R Huckaba Ranch Inc. agrees with the DNRC recommendations.

PRINCIPLES OF LAW

1. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

2. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

CONCLUSION OF LAW

1. The information in the record is sufficient to resolve the issue remark appearing on claim 41E 4095-00. Based on the information contained Mr. Larsen's *Memo*, the means of diversion issue remark appearing on 41E 4095-00 should be removed.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusion of Law, this Water Master recommends that the Court remove the issue remark from 41E 4095-00.

A post decree abstract of the water right claim reflecting the recommended removal of the remark is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

L R Huckaba Ranch Inc.
26 MT Highway 359
Cardwell, MT 59721

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER
BASIN 41E

Water Right Number: 41E 4095-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: L R HUCKABA RANCH INC
26 MT HIGHWAY 359
CARDWELL, MT 59721-9604

Priority Date: APRIL 5, 1886

Type of Historical Right: FILED

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: CONROW CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNE	16	2N	3W	JEFFERSON

Period of Diversion: APRIL 15 TO NOVEMBER 15

Diversion Means: MULTIPLE
STOCK TANK IS SECONDARY MEANS OF DIVERSION.

Period of Use: APRIL 15 TO NOVEMBER 15

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1				15	2N	3W	JEFFERSON
2				22	2N	3W	JEFFERSON

Remarks:

IMPLIED CLAIM NO. 41E 214095-00 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.